

## Merit Systems Protection Board

## § 1201.34

(2) When a judge determines that a person should be excluded from participation in a proceeding, the judge shall inform the person of this determination through issuance of an order to show cause why he or she should not be excluded. The show cause order shall be delivered to the person by the most expeditious means of delivery available, including issuance of an oral order on the record where the determination to exclude the person is made during a hearing. The person must respond to the judge's show cause order within three days (excluding Saturdays, Sundays, and Federal holidays) of receipt of the order, unless the judge provides a different time limit, or forfeit the right to seek certification of a subsequent exclusion order as an interlocutory appeal to the Board under paragraph (d)(3) of this section.

(3) When, after consideration of the person's response to the show cause order, or in the absence of a response to the show cause order, the judge determines that the person should be excluded from participation in the proceeding, the judge shall issue an order that documents the reasons for the exclusion. The person may obtain review of the judge's ruling by filing, within three days (excluding Saturdays, Sundays, and Federal holidays) of receipt of the ruling, a motion that the ruling be certified to the Board as an interlocutory appeal. The judge shall certify an interlocutory appeal to the Board within one day (excluding Saturdays, Sundays, and Federal holidays) of receipt of such a motion. Only the provisions of this paragraph apply to interlocutory appeals of rulings excluding a person from a proceeding; the provisions of §§ 1201.91 through 1201.93 of this part shall not apply.

(4) A proceeding will not be delayed because the judge excludes a person from the proceeding, except that:

(i) Where the judge excludes a party's representative, the judge will give the party a reasonable time to obtain another representative; and

(ii) Where the judge certifies an interlocutory appeal of an exclusion ruling to the Board, the judge or the Board may stay the proceeding *sua sponte* or on the motion of a party for a stay of the proceeding.

(5) The Board, when considering a petition for review of a judge's initial decision under subpart C of this part, will not be bound by any decision of the judge to exclude a person from the proceeding below.

[54 FR 53504, Dec. 29, 1989, as amended at 62 FR 62689, Nov. 25, 1997; 62 FR 66815, Dec. 22, 1997; 63 FR 35500, June 30, 1998; 65 FR 5409, Feb. 4, 2000; 68 FR 59862, Oct. 20, 2003; 69 FR 57630, Sept. 27, 2004]

### § 1201.32 Witnesses; right to representation.

Witnesses have the right to be represented when testifying. The representative of a nonparty witness has no right to examine the witness at the hearing or otherwise participate in the development of testimony.

### § 1201.33 Federal witnesses.

(a) Every Federal agency or corporation must make its employees or personnel available to furnish sworn statements or to appear as witnesses at the hearing when ordered by the judge to do so. When providing those statements or appearing at the hearing, Federal employee witnesses will be in official duty status (*i.e.*, entitled to pay and benefits including travel and per diem, where appropriate).

(b) A Federal employee who is denied the official time required by paragraph (a) of this section may file a written request that the judge order the employing agency to provide such official time. The judge will act on such a request promptly and, where warranted, will order the agency to comply with the requirements of paragraph (a) of this section.

(c) An order obtained under paragraph (b) of this section may be enforced as provided under subpart F of this part.

[54 FR 53504, Dec. 29, 1989, as amended at 62 FR 48935, Sept. 18, 1997]

### § 1201.34 Intervenor and amicus curiae.

(a) *Explanation of Intervention.* Intervenor are organizations or persons who want to participate in a proceeding because they believe the proceeding, or its outcome, may affect their rights or duties. Intervenor as a "matter of right" are those parties